

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GENE ANTHONY SUMMERS,

Defendant-Appellant.

UNPUBLISHED

January 5, 2001

No. 213399

Genesee Circuit Court

LC No. 97-000965-FH

Before: Fitzgerald, P.J., and Holbrook, Jr., and McDonald, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of receiving and concealing stolen property over \$100, MCL 750.535(1); MSA 28.803(1). Defendant was sentenced as a fourth habitual offender, MCL 769.12(1)(a); MSA 28.1084(1)(a), to six to twenty years in prison. We affirm defendant's conviction, but remand for resentencing.

On June 25, 1997, Gloria and Roy Shavers awoke to find that their 1983 Pontiac 6000 automobile was missing. Later that day, the Shavers spotted their car on the road. They called the police, who apprehended defendant and another man in the parking lot of a local drug store. When the police recovered the car, the engine was still running, but there was no key in the ignition. At trial, defendant denied that he stole the car or that he had any knowledge that it was stolen. He stated that he had rented the car from an acquaintance.

Defendant first challenges the sufficiency of the evidence supporting his conviction. Defendant argues that the prosecution's evidence was insufficient to establish that defendant had knowledge that the car was stolen at the time he took possession of the car. We disagree. "When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt." *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). "Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime." *People v Nelson*, 234 Mich App 454, 459; 594 NW2d 114 (1999).

In order to sustain a conviction of receiving and concealing stolen property over \$100, the prosecution must prove "the guilty constructive or actual knowledge of the defendant that the property received or concealed had been stolen." *People v Matuja*, 77 Mich App 291, 295; 258

NW2d 79 (1977). The prosecution presented uncontested evidence that the Pontiac 6000 had a broken steering column, thus making it necessary to use a screwdriver to start the car. Defendant testified that he was suspicious that the car might have been stolen when he rented it, because he inquired whether the car was stolen. Further, there was evidence that defendant attempted to flee from the police by exiting his car while it was still rolling. Viewing this evidence in a light most favorable to the prosecution, we conclude that there was sufficient evidence to support the jury's finding that defendant possessed the requisite mens rea.

Defendant next argues that he is entitled to resentencing because the trial court impermissibly punished defendant for rejecting a plea bargain and exercising his constitutional right to a jury trial. We agree.

It is a well-established principle that, at sentencing, the trial court may not take into consideration a defendant's exercise of his constitutional right to a jury trial or to a trial. *People v Earegood*, 383 Mich 82, 85; 173 NW2d 205 (1970); *People v Godbold*, 230 Mich App 508, 512; 585 NW2d 13 (1998). At sentencing, the trial court repeatedly criticized defendant's decision to reject the plea bargain and proceed to trial. The court questioned why defendant would put himself in the position of being sentenced to life in prison when he could have pleaded guilty to a lesser offense and obtained a minimum sentence of twelve to sixteen months. The trial court commented that defendant's decision in this regard was "stupid." Under these circumstances, we agree that resentencing is required before a different judge. See *People v Hill*, 221 Mich App 391, 398; 561 NW2d 862 (1997).

Finally, we reject defendant's assertion that the trial court failed to recognize it had discretion to credit defendant for jail time served while awaiting trial. Defendant acknowledges that the trial court was not required to grant him such sentencing credit. However, defendant argues that the trial court's failure to articulate that it understood it had such discretion necessarily means that it failed to recognize its authority. We disagree. There is nothing in the record to suggest that the trial court believed it lacked discretion on this matter. Accordingly, "the presumption that [the] trial court [knew] the law must prevail." *People v Alexander*, 234 Mich App 665, 675; 599 NW2d 749 (1999).

Defendant's conviction is affirmed. Remanded for resentencing before a different judge. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Gary R. McDonald